

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 11, 2007 Session

MONTEAGLE SUNDAY SCHOOL ASSEMBLY v. F. H. RHOADS, ET AL.

**Appeal from the Chancery Court for Grundy County
No. 5440 Jeffrey Stewart, Chancellor**

No. M2006-01707-COA-R3-CV - Filed September 26, 2007

This is an appeal by Defendants from a final judgment establishing the common boundary line between the properties of Plaintiff and Defendants. The issue on appeal arises out of the determination of the trial court during trial that Plaintiff's action was a boundary dispute and not, as Defendants argued, an action for ejectment. On appeal, Defendants contend that Plaintiff's complaint was an ejectment action and the court erred in relieving Plaintiff from the burden of proving a perfect deraignment of title. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and DONALD P. HARRIS, SR. J., joined.

Paul D. Cross, Monteagle, Tennessee, for the appellants, F. H. Rhoads and Vera J. Rhoads.

Robert J. Walker, Joseph F. Welborn, III, and John L. Farringer, IV, Nashville, Tennessee, for the appellee, Monteagle Sunday School Assembly.

OPINION

This appeal arises out of a dispute between adjoining property owners in Grundy County, Tennessee. Monteagle Sunday School Assembly (Plaintiff) is located on property described as "mountain land" on the north side of Monteagle Mountain. In November 2003, Plaintiff's superintendent of grounds noticed bulldozers beginning to set up logging operations on the northern boundary of Plaintiff's property and informed Plaintiff's general manager of these operations. Plaintiff's general manager then hand delivered a letter dated November 7, 2003, to Gilliam Logging notifying them that Plaintiff would hold Gilliam Logging liable for any trespass or harvesting of trees on Plaintiff's property. Further, the letter stated that Plaintiff's property line near horseshoe bend at Highway 41 was clearly marked by blue paint on a line of trees and "No Trespassing" signs.

On November 13, 2003, Plaintiff filed a complaint against F.H. and Vera J. Rhoads¹ (Defendants) in the Grundy County Chancery Court for injunctive relief. That same day, the trial court entered a temporary restraining order enjoining the Defendants and Gilliam Logging from coming upon or interfering with Plaintiff's property.

A bench trial was held on January 19, 2006. At the beginning of the proceedings, the trial judge inquired about the nature of the case, and Plaintiff's attorney stated that a complaint for injunctive relief had been filed, a temporary injunction granted, and presently a permanent injunction was sought on the complaint. Further, Plaintiff's attorney briefly explained the chain of title and a survey that had been done in 1982 for the purpose of "clearly marking the north boundary line, which that's what is in dispute here today."

Defendants' attorney then spoke and emphatically stated, "This is an ejectment case and that's clear from the pleadings." After Defendants' attorney further explained his proof in the case, the trial judge stated:

Well, if this is a suit in ejectment – and I say this to both of you – this is going to really boil down to the superiority to the title of the property once you establish your boundaries; isn't that right? Not so much adverse possession, not so much the typical boundary dispute facts.

Plaintiff's attorney replied, "I agree," and began putting on his proof.

During the examination of Plaintiff's last witness, Defendants' attorney objected to the admission of an abstracted title, and the trial judge commented that it was the responsibility of Plaintiff to put the necessary documents into evidence to prove perfect deraignment of title. Further, the trial judge stated that "[i]f you're in ejectment, that's the burden of proof you bear." (emphasis added). Plaintiff's counsel then argued that this was not a case for ejectment because the original complaint only requested injunctive relief and the use of the term "eject" in the complaint was only a prayer for the removal of the bulldozers from the property.

Plaintiff's attorney went on to explain to the trial court that Defendants were not in possession of Plaintiff's property, they were only trespassing and coming onto the property for the purpose of logging operations. Based on this explanation, the trial judge stated that if Defendants were not in possession "we may not be in ejectment."

After a further exchange between the court and counsel, the trial judge stated, "I am going to make a ruling then, at this time that this – I am going to find that we're not here for an ejectment case. I am going to find that we are here on the basis of injunctive relief to keep someone from committing trespass." Additionally, the trial judge explained that a perfect deraignment of title was

¹The complaint also listed Cecil H. Meeks and Lucille Meeks as defendants, but they were not parties to the lawsuit, nor are they parties to this appeal.

not necessary in a boundary line dispute, only proof of ownership. Defendants' attorney stated his objection to the trial court's rulings but made no motion or request for additional time to prepare for an unexpected cause of action. The trial then proceeded for a short time before Plaintiff rested its case.

Counsel for Defendants then put on his proof that also included a surveyor. At the close of all the proof, Defendants' attorney asked the trial judge for permission to brief the court on "the issue of whether he's permitted to change his cause of action" before issuing a ruling. The trial judge granted counsel's request and the ruling was delayed. The trial court also noted that while Plaintiff's complaint may be "inartfully drawn," counsel's position was that this was not an ejectment case in the legal sense, but only in terms of moving people off the property, and the complaint was for injunctive relief to prevent further trespass. Further, the trial judge emphasized that while Defendants objected to what they contended was a change of issue, they never requested additional time to prepare their case and did not claim to be surprised by defending a boundary line dispute until the end of the trial. The trial judge stated that had the surprise been mentioned earlier, the case could have been continued to allow preparation for the changed issue; therefore, any claim of surprise should have come before the end of trial.

Issued two weeks later², the trial court's final decree stated that Plaintiff "had carried its burden of proof and should prevail." The trial court ordered the establishment of the parties' common boundary line as established on Plaintiff's survey and permanently enjoined Defendants from harvesting timber on Plaintiff's property. Costs were assessed against Defendants. This appeal followed.

ANALYSIS

Defendants contend on appeal that Plaintiff pled its case as an ejectment action, and the trial court should not have allowed Plaintiff to try the case as a boundary line dispute. The day of trial, the trial court was faced with the disagreement between the parties as to Plaintiff's cause of action. The trial court ruled that Plaintiff's claim was a boundary line dispute and decided the case on the merits of that claim. We find no error with the trial court's determination.

The Supreme Court of Tennessee held that "[o]ne can only determine the purpose of a suit from the pleadings." *Union Tanning Co. v. Lowe*, 255 S.W. 712, 713 (Tenn. 1923). Admittedly, the pleadings in this case are inartful. Neither Plaintiff's complaint nor Defendants' answer clearly states the nature of the action.

In fact, the language of the complaint can be inferred as either an ejectment action or a boundary line dispute. The complaint does state that Defendants own property that "borders Plaintiff's north boundary line" and that Defendants' agent entered onto Plaintiff's land without

²While the trial court delayed issuing its ruling for two weeks to allow Defendants to submit a brief on the alleged issue of whether Plaintiff could change its cause of action during trial, Defendants never submitted a brief.

permission or a right to title or interest in that land. The complaint also stated that Plaintiff's "property line is clearly marked by blue paint on a line of trees designating the boundary." The prayer for relief asked for a temporary and permanent restraining order to enjoin Defendants from trespassing onto Plaintiff's property. A boundary line dispute could easily be inferred from this language. However, an ejectment action could also be inferred from the prayer for relief that requests that "the defendants be permanently enjoined from further trespass upon the subject property and ejected from the described property."

In the answer to the complaint, Defendants admitted owning property that shares a common boundary line with Plaintiff's property, and admitted engaging a logging company for the purpose of cutting timber in the disputed area, but Defendants disputed the claim that the logging company is on Plaintiff's property. Defendants also pled statutory and common law adverse possession, but made no reference to an ejectment action.³

Rule 8 of the Tennessee Rules of Civil Procedure only requires "a short and plain statement of the claim" and a demand for judgment for the relief sought. TENN. R. CIV. P. 8.01. Moreover, relief in the alternative or of several different types may be demanded. *Id.* In the present case, the complaint clearly identifies the fact that the parties share a common boundary line and little doubt exists that the matter in dispute pertains to the location of that boundary. Moreover, while the complaint uses the term "eject," it also seeks injunctive relief in the form of preventing Defendants from coming back on the property to harvest Plaintiff's timber.

As the trial judge noted during the trial, Defendants were not surprised to be embroiled in a boundary line dispute. Moreover, they were neither ambushed nor unprepared for a boundary line dispute. This is more than evident from the fact Defendants presented a land surveyor as one of their key witnesses.

Considering all of the above, we find no error with the trial judge's ruling that the complaint set forth a boundary line dispute. We therefore affirm.

³Defendants were under no duty to plead ejectment or to specifically challenge the sufficiency of a claim of a boundary line dispute in their answer. Under TENN. R. CIV. P. 8.02 a defendant is to state in short and plain terms its defenses to each claim asserted, and admit or deny the averments upon which the adverse party relies, or if the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, it may state such which will have the effect of a denial. A defendant is, however, under a duty to assert affirmative defenses, including but not limited to accord and satisfaction, estoppel, fraud, release, statute of frauds or limitations, in the responsive pleading. *See* TENN. R. CIV. P. 8.03.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Defendants.

FRANK G. CLEMENT, JR., JUDGE